

# ZONING BOARD OF APPEALS IPSWICH, MASSACHUSETTS

Meeting Minutes  
January 21, 2016

Approved: 2.18.2016  
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Pursuant to a written notice posted by the Town Clerk and delivered to all Board members, the Ipswich Zoning Board of Appeals held a meeting on Thursday January 21, 2016 at 7:30 p.m. in room A at the Town Hall. Members attending were Chairman Robert Gambale, Benjamin Fierro, Roger LeBlanc, Lewis Vlahos, and William Page. Associate Members Robert Tragert and Becky Gayton and Administrative Assistant to the Board Marie Rodgers. Building Inspector Anthony Torra was also present.

Citizen Queries: There were none.

## Public Hearings:

**27 Water Street** (Map 31D, Lot 091A) **Rivervine LLC** requests a **Special Permit and/or Variance** pursuant to Sections XI.J & XI.K – also, II Applicability A. and B.1, 2, and 5 to make a finding that the proposed two single-family attached dwellings is not more detrimental to the neighborhood than the prior non-conforming use; and section V.D Table of Use Regulations to find it is a by-right use and VI Dimensional and Density Regulations to find the footprint of the structure will be 41% less than the prior building footprint. This hearing was continued from the October and November 2015 meetings. ZBA member Roger LeBlanc recused himself and sat in the audience.

Chairman Gambale read the legal notice and re-opened the public hearing at 7:34 pm. Present were Attorney David Ankeles, representing Mr. LeBlanc; Engineer, Larry Graham, Architect Jean Allen. Attorney Paul Haverty representing the abutter Phil Mirvis and Mary Jo Hatch.

Applicants submitted additional documents for review, including revision 7 of site plans and detailed architectural design and elevations. Architect Jean Allen reviewed; plans have reduced the height and footprint, also several changes have been made to elevations.

Discussion took place between the Board and Petitioner's Attorney; there has been a reduction in windows, reduced lighting and changes in design to reduce the footprint now close to 50% from the original proposal.

Chair recognized Paul Haverty Attorney for Phil Mirvis who spoke to design massing and height; the hope is for more substantial reduction. Bill Nelson 29 Water Street questioned the height of the building Michael McGarty 32 Water Street requested additional dimensional facts regarding square footage of the occupied building and footprint; questioned the setbacks and complained of the size of the building. Larry Graham provided the setbacks on sheet six of the previously existing building; the latest revision setback is 18-feet all within the perimeter of the previously existing building; an overall reduction of over 46%.

Janet Craft 62 East Street voiced concerns for the change in use is not water dependent and requested a three-dimensional model. Discussions ensued regarding three-dimensional model and Mr. Graham spoke to elevations.

Ms. Craft expressed her confusion regarding the elevations and the description of the third floor, is not an attic; no other three stories exist in the neighborhood; no three stories buildings on the river, and is massive.

Attorney Paul Haverty repeated the request for three-dimensional model. He then spoke to change of use and criteria for a special permit and the ongoing litigation with portions of the lot line.

Chairman indicated that to replace in kind, i.e. a dwelling unit and business, the later aspect may be more detrimental to the neighborhood with traffic and parking.

Barbara Monahan 15 Damon Ave questioned how a two family could be allowed and expressed concerns regarding the size.

Mr. Fierro spoke to the reference made regarding "water related use" for clarification he stated that there is nothing in the bylaw that relates to any property along the river, that requires water related use; one and two family dwellings are allowed as a matter of right; he clarified the use is allowed by right, the structure is nonconforming, because of lot area.

Mr. Graham submitted the seventh revision of the plan and will provide an electronic copy to the office. Attorney Ankeles stated his hope for the Board to close the public hearing. The Chair suggested the Board have additional time to review new revisions submitted this evening and requested to continue to the next meeting; when they expect to close the hearing and vote.

Attorney Ankeles agreed to continue the hearing to February 18, 2016

Attorney Paul Hagerty requested a three dimensional model of the project to help address the concerns. Chair replied that he couldn't recall ever requiring a three dimensional model from another applicant.

**With permission from the Petitioner and agreement of the Board the hearing was continued to the February 18, 2016 meeting same place and time.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Submitted after November 19, 2015; email dated 1.13.2016 with attachments of a brochure for vinyl siding products 12 pages; letter dated 1.12.2016 from Graham Associates, Inc. to the conservation commission seven pages; email dated 1.19.2016 with seven attachments; sheets A,B and C Proposed Water Street Elevation, Building Section Left Side Elevation, Floor 1 first floor, Floor 2 second floor, Floor 3 third floor. January 21, 2016 meeting Permit Plan prepared for RIVERINE, LLC seven pages dated 4.1.2015; Graham Associated No. 7 Rev. plans.*

**16 Hillside Road.** (Map 24A Lot 33) **Cheryl Gresek** requests an **Appeal** to overturn the decision of the Building Inspector pursuant to XI.G and II.B of the Ipswich Zoning Protective Bylaw and revoke the building permit for the construction of a single family dwelling and require a Special Permit to increase nonconformity of the proposed reconstruction of the dwelling. Chairman Gambale read the legal notice and opened the public hearing at 8:34 pm. Mr. Vlahos and Mr. Page recused themselves and sat in the audience. Members sitting were Mr. LeBlanc, Mr. Gambale, Mr. Fierro, Mr. Tragert and Ms. Gayton.

The Petitioner was present represented by her Attorney James Moore who submitted a packet of documentation and read his nine page brief; (hereby incorporated by reference) also, a photocopy of a U.S. G.S. aerial survey dated April 4, 1965, as well as copies of town assessors' records dated 1955 and 1961. He also submitted an appraisal from Steven Ozahowski, a MA Certified Residential Real Estate appraiser, claiming that the Petitioner's property would be adversely affected and value diminished by ten to fifteen percent due to loss of light and views by the proposed reconstruction.

Attorney Moore reviewed a descriptive history of the previous structure at 16 Hillside with a front entry section, garage and connection and screened in porch at the rear of the structure were added to the original structure without building permits and the town is unable to locate any; it was demolished and the proposed new structure is three times the size of the original nonconforming structure, thereby increasing nonconformity.

Lengthy discussion took place regarding the size of the previous structure, preexisting nonconforming, dimensions and setbacks and information on various town records or the lack thereof.

Petitioner testified the original open deck was enclosed, the roof shows on how it was built “always adding on”; photos of the house prior to being razed, were shown to the Board members.

Attorney Leonard Femino representing Darrell and Joann Seppala, the owners of 16 Hillside Road, submitted a memorandum (hereby incorporated by reference) relating the history of the property and prior to their purchase, he said his clients met with town departments about the plans for their new house. After purchasing the property, his clients were issued a demolition permit and completed the demolition of the existing dwelling. Permits were issued for the installation of the foundation and septic system and completed that work.

He cited the Ipswich Protective Zoning Bylaw, specifically Section II. B. 3 providing the Building Inspector with the authority to determine that any increase in nonconformity and that he properly did so. The proposed new house will be less nonconforming than the old house and does not exceed the height limit requirements of the Bylaws. He argued that requiring applicants to produce old permits would be setting a dangerous practice.

Further discussion was held regarding legally existing nonconforming use; Attorney Moore argued that the garage was not there in 1957 and was not built in compliance with the Bylaw and is not protected as a nonconforming structure.

Attorney Femino argued that possibly everything could have been built legally, the absence of papers does not make illegal; it is the Petitioners’ burden to find the evidence; the Building Inspector determines the change in nonconforming nature and renders a decision.

Attorney Moore initiated discussion regarding the square footage ratio and the calculation of floor area; discussion ensued regarding criteria in footnote 18; the definition of floor area was deliberated and included the Building Inspector’s method of measuring floor area.

The Petitioner related her observations of the tool shed being built on the back of the garage without a permit; she went on to say, that nowhere in zoning could a garage be built on the lot line.

Anthony Torra, Building Inspector explained that he issued a permit for the foundation-only and then he issued the building permit for the modular home when the preliminary drawing plans were submitted; they will need one more permit for finishing the inside.

The Petitioner requested members of the Board to take a ride past the site, to see the structure is three feet from the property line, next to her deck, the height cast a shadow on her house and she will no longer feel the breeze from that direction. She said the building is so close to the lot line, so close to her house; originally, the Building Inspector said he wouldn’t let them build any closer than ten feet. Building Inspector denied that he said that, and Chairman said he wouldn’t take evidence that’s not in writing.

Chairman recognized Attorney Rich Kallman who spoke on behalf of the Seppalas’ and referenced the Town’s Zoning bylaw change in 1993, which gave the Building Inspector the authority, under II.B to make the finding concerning the reconstruction of a nonconforming structure.

Chair asked for further questions or comments there were none, he moved to close the public hearing, Mr. Fierro seconded, the vote was unanimous. Mr. Fierro explained the Board is not approving a plan; the plan went before the Building Inspector and he approved it.

**MOTION:**

**Mr. Gambale moved to uphold the decision of the Building Inspector to issue a permit. Mr. LeBlanc seconded, the vote was unanimous; Mr. Gambale, yes; Mr. LeBlanc, yes; Mr. Fierro, yes, Mr. Tragert, yes; Ms. Gayton, yes.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follows:* Petition and associated documentation including Permit Plan dated 10.14.2015 prepared for Darrell and Joann Seppala Graham Associated, Inc.; email dated 11.25.2015 from James Moore to Anthony Torra, BI, with attachments of case law and building permit issued to 16 Hillside Road dated 11.6.15; property work cards, Ipswich, Mass double sided dated 7.02.63; memorandum dated 1.20.2016 from Leonard Femino; Attorney Moore submitted opinion of the certified residential R.E. Appraiser dated 1.19.16 signed Steven Ozahowski SRA;

**30 Newmarch Street.** (Map31D Lot 046) **Lisa Soininen** requests a **Variance** pursuant to Sections XI-K VI.C and D of the Dimensional and Density Regulations of the Ipswich Zoning Protective Bylaw to transfer property and reduce the current lot area of 13,068 sf by 1,182 sf for a final lot area of 11,886.

Chairman Gambale read the legal notice and opened the public hearing at 10:46 pm.

The Petitioner was present and is the manager of Newmarch LLC, her husband John Soininen, was also present and represented by Attorney Philip Lake, Lake Legal LLC, 17 Hammatt St. Ipswich, MA 01938. Additionally, Jake Rogers owner/abutter at 15 Arrowhead Trail.

A petition with signatures from neighbors and two previous decisions by this Board was submitted to the Board. Attorney Blake presented the request to transfer property and reduce the current lot area of 13,068 sf by 1,182 sf for a final lot area of 11,886.

The existing lot contains a single family dwelling; it is long and narrow and runs behind nine different properties that front on Arrowhead Trail.

The odd shaped lot goes to a needle point and is over three hundred feet back from the house, the owner is paying taxes and insurance on land that is difficult to maintain and cannot be used. The transfer of land will not create more nonconformity and will make the property at 15 Arrowhead Trail more conforming.

The Board discussed the criteria for the issuance of a Variance; the lot is unusual in its shape, there is no new creation of new non-conformity; the addition of 1,182 square feet to lot at 15 Arrowhead Trail will make it more conforming and more consistent with the bylaw.

Chairman read a letter of support from Carolyn Britt abutter at 1 Shagbark Woods dated 1.21.32016. No one spoke in opposition.

As there were no further questions or comments, Chairman moved to close the public hearing, Mr. Fierro seconded, the vote was unanimous.

**MOTION:**

**Mr. Gambale moved the Board grant the Variance as requested pursuant to the provisions in the Protective Zoning bylaw sections XI.K and VI.B Table of Dimensional and Density Regulations to transfer property to 15 Arrowhead Trail, Mr. Fierro seconded. The motion passed unanimously: Gayton, yes; Vlahos, yes; Fierro, yes; Gambale, yes; and LeBlanc, yes.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow:* Petition and associated documentation. Email dated 1.21.2015 from Carolyn Britt and Michael Schaaf.

**32 Newmarch Street.** (Map 31D Lot 046A). **Lisa Soininen** requests a **Variance** pursuant to Sections XI-K VI.C and D of the Dimensional and Density Regulations of the Ipswich Zoning Protective Bylaw to transfer property and reduce the current lot area of 39,204 sf by 11,675 sf for a final lot area total of 27,529 sf. Chairman Gambale read the legal notice and opened the public hearing at 10:34 pm.

This request is similar to the previous one, only the lot is slightly larger and not so narrow; the transfer of land will not create more nonconformity and will make the lot at 15 Arrowhead Trail, more conforming.

As there were no further questions or comments, Chairman moved to close the public hearing, Mr. Fierro seconded, the motion carried by unanimous vote. The Board determined the Variance criteria have been met.

**MOTION: Gambale moved 11,675 square feet parcel as designated on the plan submitted to be allowed to transfer to 15 Arrowhead Trail, Mr. Fierro seconded. The motion passed unanimously: Gayton, yes; Vlahos, yes; Fierro, yes; Gambale, yes; and LeBlanc, yes.**

*In accordance with the revised Open Meeting Law effective July 1, 2010 all documents and exhibits used by the Appeals Board in an open session follow: Petition and associated documentation.*

**Approval of Minutes –**

Mr. Gambale moved to approve meeting minutes of 11.18.2015 with minor edits. Mr. Fierro seconded, the motion passed unanimously. *(meeting minutes hereby incorporated by reference)*

**Adjourn** - As there was no further business, the Board unanimously voted to adjourn at 11:06 p.m.

Respectfully submitted,

Marie Rodgers  
Administrative Assistant

These minutes were approved by the Board with minor edits, on February 18, 2016.